by the courts. The liability of newly annexed territory for pre-existing indebtedness involves the same idea, and the annexing statute is not unconstitutional. *Hollis* v. *City of Rochester*, 41 N. Y. Misc. 559. However, the annexation of outlying lands for the sole purpose of taxation seems confiscation; accordingly, the annexation of non-contiguous land is generally held void. *Chicago & Northwestern R. R. Co.* v. *Town of Oconto*, 50 Wis. 189.

PATENTS — RECOVERY FOR INFRINGEMENT AFTER PATENT ANNULLED. — A patentee sued for infringement and obtained an injunction and a writ of inquiry as to damages. Then the defendant in a separate proceeding had the patent annulled. *Held*, that the defendant is estopped by the judgment in the first proceeding from denying at the inquiry the validity of the patent. *Poulton* v. *Adjustable Cover, etc., Co.*, 99 L. T. R. 647 (Eng., Ct. App., July 3, 1908).

It is doubtful whether the decree in the first proceeding is a final judgment. See *McGourkey* v. *Toledo & Ohio Ry.*, 146 U. S. 536, 545. Even if it is final, yet the subsequent judgment revoking the patent creates an estoppel on an estoppel and therefore the question is left open. *Shaw* v. *Broadburt*, 129 N.Y. 114. In either case the doctrine of *res judicata* is inapplicable. But the result in the principal case may rest on another ground. A master cannot go behind the order under which the reference is made: he must accept it as conclusive of all matters embraced therein. See *Gilmore* v. *Gilmore*, 40 Me. 50. Where, as here, the sole question referred to the master is the amount of damages caused by the defendant's infringement, no issue is raised as to the validity of the patent. Evidence on that point is thus excluded at the inquiry, not because it is *res judicata* but because it is irrelevant. The intervening order of revocation is therefore improperly set up at the inquiry into damages. It is available, if at all, only in arresting the final judgment awarding damages.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — RIGHT OF WITHDRAWAL FROM SERVICE. — Certain ferries were established by the city of New York pursuant to authority granted by charter and franchise. These ferry privileges were leased to a private corporation, whose sublessee threatened to discontinue the operation of the ferries. A citizen applied for a writ of mandamus against the city of New York. *Held*, that the acceptance of the franchises imposes a duty to continue in the operation of the service, the performance of which is enforceable by mandamus. *In the matter of Wheeler*, 40 N. Y. L. J. 1117 (Sup. Ct., Dec. 1908). See NOTES, p. 367.

RECEIVERS — RECEIVERS' CERTIFICATES — RIGHT TO ISSUE IN PRIVATE CORPORATIONS. — A receiver of an insolvent private corporation composed of eighteen mills applied to a court of equity for permission to issue certificates to provide a fund for the paying for the installment on the bonded indebtedness on one of the mills which was subject to immediate foreclosure in case of default; such certificates to become a lien on all the other mills prior to that of the subsisting mortgage. *Held*, that the certificates may be issued, on the ground that such a course is necessary for the preservation of the property. *Lockport Felt Co.* v. *United Box Board & Paper Co.*, 70 Atl. 980 (N. J. Eq.). See NOTES, p. 373.

SALES — CONDITIONAL SALES — BAILMENT WITH OPTION TO BUY DISTINGUISHED FROM CONDITIONAL SALE. — The owner of furniture let it on hire, the hirer paying a lump sum in consideration of an option to purchase, and agreeing to pay a monthly rent. By the agreement, the hirer could terminate the bailment by giving a week's notice and returning the goods. Should he avail himself of the option to buy, all payments for the option and for rent were to be credited on the purchase price. The hirer being in arrear with the rent, the owner retook the goods. *Held*, that the owner has not abandoned his right to sue for the arrears in rent. *Brooks* v. *Bernstein*, [1909] 1 K. B. 98.

Where the vendee under a contract of conditional sale defaults in payment,

the vendor may retake the property or sue for the price. These remedies are generally held to be mutually exclusive, it being argued that as the consideration for the vendee's promise to pay is the passing of the property, seizure thereof causes failure of consideration barring any action by the vendor for installments past due. *Hewison* v. *Ricketts*, 63 L. J. Q. B. 711. *Cf. Crompton* v. *Beach*, 62 Conn. 25. But see 20 HARV. L. REV. 371; *ibid.* 655. Where, however, the contract constitutes a bailment for hire with an option to purchase, as in the principal case, it cannot be urged that termination of the bailment takes away the consideration; for the hirer has had the use of the property as agreed. Though contracts of conditional sale are often drawn in terms of a lease, an agreement which is really a contract of sale will be so construed, irrespective of what the parties may have called it. *Hine* v. *Roberts*, 48 Conn. 267; *Hervey* v. *R. I. Locomotive Works*, 93 U. S. 664. The test lies in the buyer's obligation. If he may avoid paying the amount of the purchase price by returning the chattel without liability for further rent, the contract is one of hire; for an agreement of sale and purchase necessitates two parties mutually bound, the one to pass and the other to take title. *Helby* v. *Matthews*, [1895] A. C. 471.

SALES — RIGHTS AND REMEDIES OF BUYERS — RIGHT OF INSPECTION BEFORE PAYMENT. — The plaintiff ordered from the defendant a quantity of groceries of a specified quality. He paid a part of the purchase price at the time of ordering and the balance was to be paid upon the arrival of the goods. The defendant shipped f. o. b. at the place of consignment on a bill of lading to the shipper's order. He notified the plaintiff that the goods were not of the required quality. The plaintiff refused to pay the draft sent with the bill of lading before inspecting the goods, and the defendant refused to allow inspection. The plaintiff brought an action to recover the part payment. *Held*, that the plaintiff may recover. *Plumb* v. *Bridge*, 113 N. Y. Supp. 92 (Sup. Ct., App. Div.).

The buyer under an executory contract of sale ordinarily has a right to inspect the goods before acceptance and payment of the purchase price. *Isherwood* v. *Whitmore*, 11 M. & W. 347. But the terms of the contract and the circumstances of the case may negative the right to inspection as a condition precedent to payment of the price. *Sawyer* v. *Dean*, 114 N. Y. 469. Thus, where payment is to be made against the bill of lading, the general rule is that payment must be made before the goods may be inspected. *Whitney* v. *McLean*, 4 N. Y. App. Div. 449. And the same is true in the case of a shipment C. O. D. *Wiltse* v. *Barnes*, 46 Ia. 210. See 18 HARV. L. REV. 386. But the decision in the principal case may be rested on another ground; for the admission by the defendant that the goods shipped were not of the required quality justified the plaintiff in refusing to accept them.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — RIGHT OF VENDOR TO SUE FOR WASTE. — A contracted to sell land to B. Then B entered into a contract with C under which C cut timber on the land. Later B assigned to D. D paid A and brought suit against C in A's name. *Held*, that there can be no recovery. *McGregor* v. *Putney*, 71 Atl. 226 (N. H.).

A mortgagee may enjoin a mortgagor in possession from committing waste if the threatened acts would make the value of the property inadequate as a security. *William* v. *Chicago Exhibition Co.*, 188 Ill. 19. And the acts need not be such as would make the value of the land less than the mortgage debt, but only such as would make the security substantially less than the security contracted for. *King* v. *Smith*, 2 Hare 239; *Moriarty* v. *Ashworth*, 43 Minn. 1. The relation of vendor and vendee is recognized as analogous and the same rules are applied. *Van Wyck* v. *Alliger*, 6 Barb. (N. Y.) 507. In most jurisdictions a mortgagee cannot recover at law unless his security is rendered actually inadequate, while in others any lessening of value is enough. *Schalk* v. *Kingsley*, 42 N. J. L. 32; *Byrom* v. *Chapin*, 113 Mass. 308. Where the vendor brings his action at law there seems no reason why the analogy to the mortgage cases should not continue. But as the basis of relief in all cases is impairment of the value of the security, neither vendor nor mortgagee can